

EXHIBIT 1

Exhibit 1: Packing Defendants' Share of LMR AMS Data

1. Various figures and calculations within the Complaint utilize fed cattle sales and slaughter data published by the USDA Agricultural Marketing Service (“AMS”). These data series consist of fed cattle purchases reported by beef packers pursuant to the AMS’ Livestock Mandatory Reporting (“LMR”) requirements.

2. Only federally inspected cattle slaughter plants that have slaughtered a minimum annual average of 125,000 head of cattle for the five preceding years, or those plants which have operated for fewer than five years but which the USDA determines have the capacity to slaughter that amount of cattle, are subject to the LMR requirements.¹

3. Based on their published slaughter capacities, each of Tyson, JBS, Cargill and National Beef’s fed cattle slaughter plants meet this requirement and thus the cattle slaughtered at these plants form part of the AMS series derived from LMR data.

4. As shown in Table 1 below, fed cattle sales reported by AMS LMR in 2015 through 2019 constitute 85%-89% of total fed cattle sales during that period based on North American Meat Institute’s (“NAMI”) most recent estimates of total annual slaughter.² During this five-year period, Tyson, JBS, Cargill and National Beef’s cumulative share of NAMI’s annual slaughter estimates was between 81% (*see* Table 2 below). Between 2007 and 2014, total sales reported by AMS LMR constituted between 83% and 90% of NAMI’s annual slaughter estimates (*see* Table 1).³ Between 2007 and 2014, Packing Defendants’ cumulative annual share of these cattle ranged between 82%

¹ Joel L. Greene, CONG. RESEARCH SERV., R45777, LIVESTOCK MANDATORY REPORTING ACT: OVERVIEW FOR REAUTHORIZATION IN THE 116TH CONGRESS at 8-9 (2019), <https://fas.org/sgp/crs/misc/R45777.pdf>.

² *See* 2018 Meat & Poultry Facts, 47th ed., NORTH AMERICAN MEAT INSTITUTE, 2019, at 12 (“2018 Meat & Poultry Facts”).

³ *Id.*

and 94% (see Table 2).

Table 1.
Total AMS LMR-Reported Fed Cattle as a Percentage of
Total NAMI Commercial Slaughter – Fed Cattle⁴

2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
82%	86%	83%	84%	85%	88%	88%	88%	90%	83%	86%	86%	86%	85%	89%	87%

Table 2.
Packing Defendants’ Combined Share of
NAMI Commercial Slaughter – Fed Cattle⁵

Year	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
JBS	23%	19%	24%	25%	23%	23%	23%	24%	21%	22%	21%	21%	21%
Tyson	29%	27%	27%	27%	27%	27%	27%	29%	29%	26%	26%	26%	26%
Cargill	23%	23%	28%	24%	23%	23%	22%	20%	21%	21%	22%	21%	21%
National Beef	14%	14%	14%	14%	14%	14%	14%	13%	13%	13%	13%	12%	13%
Total Defendants	89%	82%	94%	90%	87%	87%	87%	85%	83%	83%	82%	81%	82%
Others	11%	18%	6%	10%	13%	13%	13%	15%	17%	17%	18%	19%	18%

5. As suggested by these market share figures, and shown in Table 3 below, during

⁴ Total AMS LMR fed cattle numbers were calculated using the following reports: USDA-AMS, National Weekly Direct Slaughter Cattle Report – Formulated and Forward Contract: LM_CT151; USDA-AMS, National Weekly Direct Slaughter Cattle-Negotiated Purchases: LM_CT154; and USDA-AMS, National Weekly Packer Owned Slaughter: LM_CT153-A. The calculations were performed in accordance with established literature for obtaining the estimate of weekly total slaughter. See Scott Fausti, *et al.*, GRID MARKETING AND BEEF CARCASS QUALITY: A DISCUSSION OF ISSUES AND TRENDS 12, table 2 (2008). 2018 Meat & Poultry Facts. 2019 NAMI Commercial Slaughter – Fed Cattle was estimated using the average annual proportion of NAMI’s total commercial slaughter to slaughter under federal inspection, as reported in USDA-AMS, Actual Slaughter Under Federal Inspection (SJ_LS711).

⁵ 2018 Meat & Poultry Facts. Packing Defendants’ fed cattle numbers were derived using the annual U.S. slaughter volume for all types of cattle and the percentage cattle type mix for each Packing Defendant, as reported by *Cattle Buyers Weekly*. See *Cattle Buyers Weekly*, “Top 30 Beef Packers 2008”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2009”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2010”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2011”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2012”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2013”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2014”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2015”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2016”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2017”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2018”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2019”; *Cattle Buyers Weekly*, “Top 30 Beef Packers 2020”.

these periods, the Packing Defendants’ combined annual fed cattle slaughter volume has effectively matched that reported by AMS LMR.

Table 3.
Packing Defendants’ Combined Annual Fed Cattle Slaughter Expressed
as a Share of AMS LMR-Reported Fed Cattle Slaughter Volumes

Defendant	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
JBS	28%	22%	28%	28%	26%	26%	28%	28%	24%	26%	25%	23%	24%
Tyson	35%	31%	31%	31%	31%	30%	33%	33%	33%	31%	31%	30%	30%
Cargill	27%	27%	32%	28%	26%	26%	26%	23%	24%	25%	26%	24%	25%
National Beef	17%	16%	16%	16%	16%	16%	17%	15%	15%	15%	15%	14%	15%
All Defendants	106%	97%	106%	103%	99%	98%	104%	99%	96%	96%	96%	91%	94%

6. While the USDA is prevented by confidentiality conditions imposed by the LMR from releasing details of the exact proportion of sales reported in its AMS LMR series that are attributable to the Packing Defendants, it is reasonable to conclude that the Packing Defendants purchased over 90% of such fed cattle.⁶

⁶ Certain of the Packing Defendants’ sales and non-Defendants’ sales will not have been included in the AMS LMR series due to the AMS “3/70/20” confidentiality guideline. In determining what purchase data can be published, the guideline “requires that (1) at least three entities report 50% of the time over the most recent 60-day period, (2) no single reporting entity may account for more than 70% of reported volume over the most recent 60-day period, and (3) no single reporting entity may be the only reporting entity for a single report more than 20% of the time over the most recent 60-day period.” The adoption of these guidelines in August 2001 has been said to have “eliminated most of the data gaps”. Greene, *supra* note 1, at 9-10.